

S-113

ENTERED ON DOCKET

11/21/02 *tu*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE:

CHAPTER 11

THE GILBERT AND BENNETT
MANUFACTURING COMPANY,

CASE NO. 98-22358-REB

Debtor.

JUDGE BRIZENDINE

**STIPULATION AND ORDER APPROVING SETTLEMENT AGREEMENT
REGARDING PROOF OF CLAIM FILED BY THE UNITED STATES OF AMERICA**

WHEREAS, this case was commenced by involuntary Chapter 7 petition filed on October 2, 1998, in the United States Bankruptcy Court for the District of Connecticut. The case was transferred to this Court and an Order for Relief was entered on November 5, 1998. The case was converted to one under Chapter 11 by Order entered on November 5, 1998. On August 26, 1999 David W. Cranshaw was appointed Trustee; and

WHEREAS, in or about April 1999, the United States, on behalf of the Environmental Protection Agency (the "EPA"), filed a Proof of Claim against the Debtor, claim number 443, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, for environmental response costs incurred by the United States at several sites located in Georgetown, Connecticut and Wilton, Connecticut (the "Sites"), and for response costs to be incurred in the future by the United States at the Georgetown, Connecticut Site (the "EPA Claim");

WHEREAS, David W. Cranshaw, the Chapter 11 Trustee for The Gilbert & Bennett Manufacturing Company (the "Trustee") filed an objection to allowance of the EPA Claim;

WHEREAS, the Trustee, the United States of America and the Official Committee of Unsecured Creditors (the "Committee") desire to settle, compromise and resolve the objection to the EPA Claim;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the parties hereto, subject to

NOV 26

973307

approval by the Bankruptcy Court, as follows:

1. The EPA Claim shall be allowed as an Unsecured Claim in the amount of \$1,327,000 and paid, on a pro-rata basis, as a Class 4 Environmental Claim in accordance with the terms of the First Amended Chapter 11 Plan of Liquidation dated October 10, 2002 ("Plan of Liquidation"). The United States will be deemed to have withdrawn the EPA Claim for any amount in excess of \$1,327,000 and the United States agrees that it shall not be entitled, in any event, to assert any further claim in this bankruptcy case.
2. The Trustee shall be deemed to have withdrawn his objection to the EPA Claim.
3. The United States shall be deemed to have withdrawn its objection to the Plan of Liquidation, which objection was filed jointly by the United States Environmental Protection Agency and the Connecticut Department of Environmental Protection on November 12, 2002.
4. The United States shall not vote against, or oppose confirmation of, the Plan of Liquidation, provided there are no material modifications to the Plan of Liquidation.
5. Payment on the EPA Claim pursuant to the Plan of Liquidation shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing CERCLA Number _____ and U.S.A.O. file no. _____, in accordance with instructions to be provided by the United States to the Trustee.
6. The amount of the actual cash received pursuant to the Plan of Liquidation on account of the allowed EPA Claim shall be credited by the EPA to the accounts for the Sites.
7. In consideration of the payments or distributions that will be made with respect to the EPA Claim pursuant to the Plan of Liquidation, the United States covenants not to bring a civil action or take administrative action against the Debtor or its bankruptcy estate pursuant to Sections 106 and 107 of CERCLA relating to the Sites. This covenant not to sue is conditioned upon the complete and satisfactory performance by the Trustee, on behalf of the Debtor's estate, of its obligations under this Stipulation.
8. The covenant not to sue set forth in paragraph 7 of this Stipulation does not pertain to

any matters other than those expressly specified in paragraph 7 of this Stipulation. The United States reserves, and this Stipulation is without prejudice to, all rights against the Debtor with respect to all other matters, and specifically with respect to: liability for damages for injury to, destruction of, or loss of natural resources; liability for response costs that have been or may be incurred by federal and state agencies which are trustees for natural resources; and claims for any site other than the Sites.

Notwithstanding the reservation of rights in this paragraph of the Stipulation, in no event shall the United States be entitled to assert any claim for reimbursement or distribution from the Trustee or the Debtor's bankruptcy estate other than the EPA Claim, as allowed in paragraph 1 of this Stipulation in the amount of \$1,327,000. Furthermore, in no event shall the reservation of rights in this paragraph of the Stipulation be deemed or construed to modify, limit or supercede in any manner the terms and provisions of the Plan of Liquidation or any order of the Bankruptcy Court confirming the Plan of Liquidation.

9. With regard to claims for contribution against the Debtor or its bankruptcy estate for matters addressed in this Stipulation, the Debtor and its bankruptcy estate are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

10. The Trustee, on behalf of the Debtor's bankruptcy estate, covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Sites, including but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims for contribution against the United States, its departments, agencies or instrumentalities, and any claims arising out of response activities at the Sites. Nothing in this Stipulation shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

11. Nothing in this Stipulation shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Stipulation.

12. If this Stipulation is not authorized and approved by the Bankruptcy Court, the

Stipulation shall be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of either party with respect to the matters contained herein.

13. This Stipulation represents the complete agreement of the parties hereto on the matters referred to herein and supersedes all prior agreements, understandings, promises and representations made by the parties hereto concerning the subject matter hereof. This Stipulation may not be amended, modified or supplemented, in whole or in part, without the prior written consent of the parties hereto and the approval of the Bankruptcy Court.

[SIGNATURES ON FOLLOWING PAGE]

MORRIS, MANNING & MARTIN, LLP

By: David W. Cranshaw
Georgia Bar No. 1934501600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326
(404) 233-7000
Counsel for Trustee

GREENBERG TRAURIG, LLP

By: James R. Sacca *in consent*
Georgia Bar No. 621843The Forum
3290 Northside Parkway, N.W.
Suite 400
Atlanta, Georgia 30327Counsel for The Official Committee of
Unsecured Creditors

FOR THE UNITED STATES OF AMERICA


BRUCE GELBERSection Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
HENRY FRIEDMANSenior Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Division of Justice
P.O. Box 7611
Washington, D.C. 20044WILLIAM S. DUFFY, JR.
United States Attorney
District of Georgia

The foregoing Stipulation having been approved by counsel for the Committee and the Court finding that no further notice is necessary or appropriate under the circumstances pursuant to Bankruptcy Rule 9019, the foregoing Stipulation is hereby approved and entered as of this 19th day of November, 2002.


ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

Mr. James Morawetz
Office of the United States Trustee
362 Richard B. Russell Building
75 Spring Street, S.W.
Atlanta, Georgia 30303

David W. Cranshaw, Esq.
Morris, Manning & Martin, LLP
3343 Peachtree Road, N.E.
Suite 1600
Atlanta, Georgia 30326

James R. Sacca, Esq.
Greenberg Traurig, LLP
The Forum
3290 Northside Parkway, N.W.
Suite 400
Atlanta, Georgia 30327

Bruce Gelber
Section Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

Henry Friedman
Senior Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Division of Justice
P.O. Box 7611
Washington, D.C. 20044